

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 714 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NEW EDUCATION GIRLS HIGH SCHOOL

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR NK MAJMUDAR for Petitioner

MR NN PANDYA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The challenge is made by the petitioner in this writ petition to the order of the District Education Officer dated 17th March, 1982, annexure 'F' under which 5% of the grant of the institution was ordered to be deducted for the year 1981-82. Against this order, the petitioner filed an appeal to the Director of Education which has been dismissed. The matter was taken up by the petitioner to

the State Government in the second appeal, but without any relief. The Director of Education and the State Government have confirmed the order of the District Education Officer. Hence, this Sp. Civil Application before this Court.

2. One lady teacher, Kum. N.S. Trivedi was declared as supernumerary teacher by the New Education High School. It is the case of the petitioner that New Education High School where from the aforesaid lady teacher was declared as supernumerary teacher was run by the same trust which runs the petitioner's school, namely New Education Girls High School. The petitioner applied for getting no objection certificate from the District Education Officer for making appointment of one teacher who can teach Sanskrit and English. As supernumerary teacher was available, the District Education Officer under its letter dated 5-11-1981 directed the petitioner school that she should be absorbed. The petitioner instead of implementing the directions of the District Education Officer, to absorb the supernumerary teacher from school which was run by the same trust, started to raise objection that the said lady is not fit to teach English and Sanskrit, and the school needs the teacher in the subjects English and Sanskrit. Naturally, in these circumstances, the District Education Officer has no remedy except to call upon the petitioner to show cause why 5% grant cut should not be imposed for the action of the school not to absorb the supernumerary teacher. This notice is dated 20th January, 1982. The petitioner received this notice and gave a reply to the same on 30th January, 1982. Under the order dated 17th March, 1982, 5% of the grant cut was imposed for the year 1981-82. The counsel for the petitioner made three fold submissions in the present case. Firstly, the contention has been made that the District Education Officer could not have thrust upon the school, a teacher, may be a supernumerary teacher, who is unable to teach Sanskrit and English. The petitioner school was in need of the teacher who can teach Sanskrit and English subjects, and as such, only the supernumerary teacher with the qualification to teach English and Sanskrit subjects could have been ordered to be absorbed. It has next been contended that the three authorities, ie. the District Education Officer, The Director of Education and the State Government have passed the order without hearing the petitioner, and as such, the orders deserves to be set aside. In the second appeal, the State Government has given a notice to the petitioner for hearing on 20th January, 1983 and the same was received by the petitioner on 21st January, 1983, and as such, it cannot be said

that any opportunity of hearing has been given. It has lastly been contended that the teacher Kum. N.S. Trivedi has been absorbed in the month of August, 1982, and as such, the order of the District Education Officer of the grant cut should not have been given effect to for the year 1981-82.

3. On the other hand, Shri N.N. Pandya, learned counsel for the respondents contended that the petitioner receives the grant-in-aid, and as such, supernumerary teacher has to be absorbed. The petitioner has no option except to absorb the supernumerary teacher. If the teacher was not fit for teaching Sanskrit and English subjects then the petitioner could have made a request for appointing such a supernumerary teacher, and should have applied for obtaining N.O.C. after absorption such teacher elsewhere. But the supernumerary teacher could not have been denied to be absorbed only on this ground that she was not fit for teaching Sanskrit and English. If such an attitude is allowed to be taken by the institution which are receiving grant-in-aid from the Government, then the very purpose of absorbing supernumerary teacher will be defeated and the teacher will be put in difficulties. It has next been contended that the District Education Officer has passed the order of 5% grant cut after giving the show-cause notice to the petitioner. There is no provision of giving an opportunity of personal hearing to the petitioner at this stage. Similarly in the appeals filed by petitioner, personal hearing was not contemplated and required. Lastly, it has been contended by the counsel for the respondent that the petitioner has absorbed the said teacher in August, 1982 i.e. after passing of the order of the grant cut, and only on this ground, the default which has been committed by the petitioner could not have been taken off. The petitioner has to absorb the teacher otherwise grant cut should have been continued for the next subsequent years also.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In the present case, the order of grant cut of 5% for the year 1981-82 has been passed by the District Education Officer after giving show-cause notice to the petitioner. The petitioner submitted a reply to the show-cause notice. The learned counsel for the petitioner has failed to point out any such provisions from any Act or the rules or even from any other administrative provisions, or Government resolution which gives any right of personal hearing to the petitioner at the stage of passing of grant cut order. In view of this fact, it

cannot be said that the District Education Officer has violated the principles of natural justice in making the order of 5% grant cut.

5. So far as the grievance of the petitioner that the Director of Education has not given any opportunity of personal hearing to the petitioner is concerned, it is suffice to say that in the absence of any rule to the contrary, affording of an opportunity of personal hearing in the departmental appeal is not necessary. The learned counsel for the petitioner despite of putting a specific question by the Court was unable to show any rule statutory or any resolution of the Government which makes a provision to afford the petitioner an opportunity of personal hearing in the appeal. The same analogy is applied to the other contentions of the learned counsel for the petitioner. In the second appeal also an opportunity of personal hearing could have been given in case any such rules or any other resolution, makes such a provision which the learned counsel for the petitioner has failed to show. It is true that the second appellate authority has given a notice to the petitioner for hearing which would have been received by it after the expiry of date. I do not want to enter into the question whether the notice was received after the expiry date or not. But suffice to say that when the petitioner has no right of personal hearing to be given to him in the appeal, how it will make any difference. On such ground, this order of the second appellate authority cannot be quashed.

6. So far as the other contention of the learned counsel for the petitioner that the District Education Officer could not have thrust upon the petitioner of a teacher who be a supernumerary teacher, who is unfit to teach Sanskrit and English, is concerned, it is also devoid of any merits. A supernumerary teacher has to be absorbed in the school and the plea of the petitioner that he is not fit to teach a particular subject is of no consequences. The State Government gives grant to the institution and it is its obligation to see that any surplus teacher from one institution may not suffer unemployment and he should be absorbed where a vacancy is available. To meet out the situation where in a given school that teacher may not be fit for particular subject, the matter may be considered later on, but the petitioner could not have disobeyed the order of the District Education Officer by declining to absorb a supernumerary teacher. Once the District Education Officer declined to grant N.O.C. on the ground that supernumerary teacher is available, the institution

receiving the grant-in-aid has no option except to carry out the orders and absorb the supernumerary teacher in the institution. If it is really in need of a teacher who can teach Sanskrit and English, the matter could have been taken to the District Education Officer, but the school could not put a condition that only teacher who is able to teach Sanskrit and English could have been ordered to be absorbed and no other teacher. It is a case where the petitioner has deliberately flouted the order of the District Education Officer, and as such, no illegality whatsoever has been committed by the said Officer in passing of a grant cut order of 5% for the year 1981-82. The petitioner has conveniently not given the qualifications possessed by the supernumerary teacher. She might have possessed the qualification of teaching English and Sanskrit to Std. VIII & IX. Be that as it may, where the teacher was declared surplus from the another sister institution of the Trust and the attitude of another sister institution which both are run by the same trust, not to absorb the surplus teacher is highly unreasonable and unjustified. The last contention of the learned counsel for the petitioner is of no substance. If the order has been complied with after disobeying it and when grant has been ordered to be cut by 5% on this ground this order cannot be recalled. The petitioner has to suffer for its own deliberate and wilful action of disobedience of the order of the District Education Officer. In the result, this Special Civil Application fails and the same is dismissed with costs of Rs.1000/-. Rule discharged.
